

Serial No. 09/889,331

Atty. Docket No. 249/167US

REMARKS

With this response, claims 27, 29, 31, 40 and 41 have been amended. New claim 44 has been added. Support for new claim 44 can be found on page 52 of the specification as filed. No new matter has been added. Claims 1 to 20 have been cancelled previously. Thus, the currently pending claims are 21 to 44. Applicants acknowledge and thank the Examiner for withdrawing the finality and vacating the previous Office Action mailed 29 January 2004. Applicants also acknowledge the Examiner's finding that current claims 21-26, 38-30, and 32-43 are allowable.

Objections to the Specification

In the Office Action the specification was objected to as not containing an abstract as required by 37 C.F.R. 1.72(b). With this response the specification has been amended to include an abstract.

Non Art Based Rejections**Rejections Under 35 U.S.C. 112, Second Paragraph**

In the Office Action, claim 31 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite for containing open-ended Markush language. With this response, claims 29, 31, 40 and 42 have been amended as suggested by the Examiner.

Rejections Under 35 U.S.C. 112, First Paragraph

In the Office Action, claim 27 was rejected under 35 U.S.C. 112, first paragraph, as containing new matter. In particular, it is alleged that the recitation of an "anti-glucagon agent" in claim 27 represents a departure from the specification and claims as originally filed. Applicants respectfully traverse this rejection. Applicants wish to draw the Examiner's attention to the paragraph beginning at line 11 on page 52 of the specification. This paragraph provides that the extendin agonist may be conveniently provided with another "anti-glucagon agent." Additional support can be found in the paragraph beginning at line 12 of page 55 which states

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that "the compounds will be provided in dosage unit form containing an amount of an exendin, exendin agonist, or modified exendin or exendin agonist, with or without another anti-glucagon agent." Thus, Applicants respectfully submit that the recitation of anti-glucagon agent in claim 21 is fully supported by the specification as filed and so does not constitute new matter. Applicants, therefore, respectfully request reconsideration and withdrawal of the rejection of claim 21 under 35 U.S.C. 112, first paragraph.

Art Based Rejections

Applicants acknowledge that no claims are currently rejected under either 35 U.S.C. 102 or 35 U.S.C. 103.

Conclusion

In light of the foregoing amendments and remarks, Applicants respectfully request reconsideration and withdrawal of all objections and rejections set forth in the Office action of May 21, 2004. Further, Applicants respectfully submit that all claims presently under consideration are in a condition for allowance and requests issuance of a Notice of Allowance at the Examiner's earliest convenience.

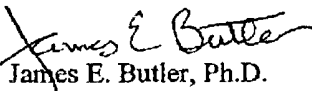
Should the Examiner have any remaining questions regarding the subject invention or its patentability, Applicant encourages the Examiner to contact the undersigned to answer such questions or provide additional information.

Applicants believe that no fee is due in association with this response. If the Applicants are in error, the Commissioner is hereby authorized to charge any underpayment or credit any overpayment that may occur during the pendency of this application to Deposit Account No. 01-0535.

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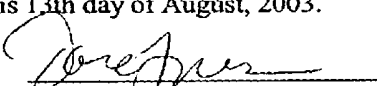
Respectfully submitted,


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CERTIFICATE OF FACSIMILE TRANSMISSION UNDER 37 C.F.R. 1.8

I hereby certify that the above RESPONSE UNDER 37 C.F.R. 1.111 in the application of Young et al., Serial No. 09/889,331, filed December 18, 2001, is being submitted to the Commissioner for Patents, United States Patent and Trademark Office, by facsimile transmission to telephone number (703) 872-9306 on this 13th day of August, 2003.


Diane Trus